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Timothy M. Kelly
Michael Best & Friedrich
1000 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4108

In re Application of :
YOUNGQUIST et al. :
Application No.: 09/980,352 : DECISION ON PETITION
PCT No.: PCT/US00/05194 : UNDER 37 CFR 1.181
Int. Filing Date: 01 March 2000 :
Priority Date: 01 June 1999 :
Attorney Docket No.: 092271-9010 :
For: BIARYL COMPOUNDS :

This is a decision on applicants' "Petition to Withdraw a Holding of Abandonment under 37 CFR 1.181," filed in the Patent and Trademark Office (PTO) on 17 December 2002, 14 April 2003, and 21 May 2003. No petition fee is due.

BACKGROUND

On 01 March 2000, applicants filed international application PCT/US00/05194 which claimed a priority date of 01 June 1999 and designated the United States. A Demand for international preliminary examination was filed prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States was midnight, 01 December 2001.

On 30 November 2001, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, *inter alia*,: the basic national fee and a preliminary amendment.

On 08 January 2002, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) must be filed. The notification set a two-month time limit in which to respond.

On 19 November 2002, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to file a response to the Notification of Missing Requirements mailed 08 January 2002 within the time period set therein.

On 17 December 2002, applicants filed "Petition to Withdraw a Holding of Abandonment under 37 CFR 1.181" which included an executed declaration of inventors/

On 14 April 2003 and 21 May 2003, applicants submitted a copy of the papers filed 17 December 2002.

DISCUSSION

With regards to applicants' request that the holding of abandonment be withdrawn, a proper showing in order to establish that papers were not received as set forth in the Official Gazette at 1156 OG 53 must include the following: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket record must also be referenced in practitioner's statement).

Concerning item (2) above, applicants have not provided a statement attesting that a search of the file jacket and docket records indicates that the papers were not received.

As to item (3), applicants have provided a copy of the docket record which purportedly shows where the paper would have been entered had it been received. The printout of the docket report for this specific application is not sufficient to establish that the Notification of Missing Requirements was not received and mis-docketed to another application. Accordingly, applicants are required to provide docket records for 08 March 2002, indicating all applications for which a response was due on said date.

Thus, applicants have not provided the proper showing necessary to withdraw the holding of abandonment and the petition may not be properly granted.

CONCLUSION

The petition under 37 CFR 1.181 is **DISMISSED** without prejudice and the application remains **ABANDONED**.

If reconsideration on the merits of this petition is desired, an appropriate response to this decision must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181." Extensions of time may be obtained under 37 CFR 1.136(a).

Deposit Account No. 13-3080 has been charged a \$65.00 surcharge fee under 37 CFR 492(e) for supplying an oath or declaration later than 30 months from the earliest claimed priority date.

Any further correspondence with respect to this matter deposited with the United States Postal Service should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Anthony Smith

Anthony Smith
Attorney-Advisor
Office of PCT Legal Administration
Tel.: 703-308-6314
Fax: 703-308-6459